HIGH COURT OF UTTARANCHAL AT NAINITAL

Criminal Misc. Application No.416 of 2006

1. Brij Narayan Tewari
   S/o Secretary Arya Samaj Temple
   R/o Majhola
   P.S. Neuriya
   District Pilibhit
2. Hari Om
   S/o Sri Ram Prashad
   R/o near house of Brij Narayan Tewari
   Arya Samaj Temple
   R/o Majhola
   P.S. Neuriya
   District Pilibhit ....Applicants

Versus

1. State of Uttaranchal
2. Judicial Magistrate, Khatima
   U.S. Nagar
3. Poonam Rana
   W/o Sri Vijay Singh Rana
   R/o Village Umrukhurd
   P.S. Khatima
   Tehsil Khatima
   District U. S. Nagar ..... Respondents

Dated "- 29th June, 2006

Mr. M. C. Kandpal learned counsel for the applicants.
Mr. Amit Bhatt learned AGA for the State.

Hon'ble J.C.S. Rawat, J.

1. The petition under section 482 Cr.P.C. has been filed for quashing the proceedings and summoning order dated 08.05.2006 passed by the Judicial Magistrate, Khatima, U.S. Nagar in criminal case No.502/2006 under sections 504, 506 IPC.

2. Brief facts of the case are that on 02.05.2006 the respondent no.3-Poonam Rana filed a complaint before the Judicial Magistrate, Khatima against the applicants under sections 504 & 506 IPC alleging therein that she was returning to her house on 26.04.2006 at about 3PM. When she reached nearby the house of one-Chandrika

Bharti, the applicants-accused came there on a motorcycle and they hurried abuses to her and also threatened her with dire consequences. When the complainant asked them about the cause of hurling abuses, they again threatened to kill her and they also threatened that they would kill her husband. When the witnesses reached at the spot, the accused persons fied away from the place of occurrence. The learned Magistrate recorded the statements under section 200 & 202 Cr.P.C. and thereafter he summoned the applicants vide order dated 08.05.2006. Feeling aggrieved by the order of Magistrate, the present petition has been filed.

3. Learned counsel for the applicants has filed a copy of the order dated 26.04.2006 passed by the Division Bench of the Allahabad High Court in W.P. No.2283/2006 Hari Om Vs. State of U.P. & 9 others, which is as follows:-

> *"This writ petition has been filed by the petitioners seeking protection from the respondents for the reason that they have married out of love and affection without any coercion or force. Both the petitioners are present in Court. We have examined them and we are satisfied that both of them are major.*
>
> *After hearing the learned counsel for the petitioners and the learned Standing Counsel appearing for respondent Nos.1 to 3, we dispose of this writ petition directing the SSP, Pilibhit, respondent no.2 to ensure the safety and security of the petitioners and prevent them from any kind of harassment by the respondent nos.4 to 10 or by any other person at their behest because of their marriage."*

4. Learned counsel for the applicants has also filed the copy of the statements recorded under section 200 & 202 Cr.P.C. The said statements were recorded at the behest of the complainant. It was contended on behalf

of the applicants that the Magistrate has not applied his Judicial mind. The Magistrate has not put any question to the witnesses with regard to the said marriage. The Magistrate has to consider the statement on oath recorded under sections 200, 202 Cr.P.C. and other evidence filed on behalf of the complainant. It is the duty of the Magistrate to ensure as to whether the case is probable and whether the case is concocted or correct one. The learned Magistrate should have put questions to the witnesses as well as to the complainant. The learned counsel for the applicants has referred the decision of the Hon'ble Apex Court in **M/s Pepsi Food Ltd. Vs. Special Judicial Magistrate J.T. 1997(8) S.C. p/705,** in which it has been held as under:

> *"Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. Magistrate has to carefully scrutinize the evidence brought on record and may even*

himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused."

5. The above proposition of law clearly emphasizes that the Magistrate, while summoning the accused or taking the cognizance, should scrutinize the evidence and put the questions to all the witnesses as well as to the complainant.

6. In view of the above, the summoning order passed by the learned Magistrate is liable to be set aside. The Magistrate should have put the question to the complaint as well as to the witnesses to know the veracity of the incident. The Magistrate should have verified by putting questions as to whether the present complaint is actually a counter-blast or as to whether the incident took place or not.

7. Therefore, the summoning order dated 08.05.2006 passed by the Judicial Magistrate, Khatima, U.S. Nagar in criminal case No.502/2006 is set-aside. The case is remitted back to the learned Magistrate to decide the same afresh in the light of the observations made above.

8. The petition is disposed of accordingly. The Misc. application, if any, is also disposed of.

(J. C. S. Rawat, J.)

Dated 29.06.2006

LSR